

OPEN SPACES ENDLESS OPPORTUNITIES

October 1, 2019

The Honorable Ken Paxton  
ATTN: Opinion Committee  
P. O. Box 12548  
Austin TX 78711-2548

*Via Cert. Mail 7018 1830 0001 9039 5960*

**Re: SUPPLEMENT W/ EXHIBIT 7 ENCLOSED**  
**Request for opinion under Chap 552, Texas Gov. Code**  
**Request 19-1699**

Dear General Paxton:

Pursuant to the Texas Public Information Act (P.I.A.), sections 552.301 and 552.305 of the Texas Government Code, your opinion is requested as to whether or not the below requested information, or any part thereof, is excepted from disclosure.

#### FACTS

On or about July 12, 2019, the City of Amarillo received a Public Information Request for records from the Amarillo Police Department. A request for clarification was mailed to the requestor on July 25, 2019. Clarification was received on August 8, 2019. On August 22, 2019, an estimate of charges was mailed to the requestor. The requestor accepted that estimate of charges on August 22, 2019. A copy of the request and those additional documents was mailed to the Office of The Attorney General on September 24, 2019. The City is now providing the Office of the Attorney General with "Exhibit 7"<sup>1</sup> pursuant to §552.301(e) of the Texas Government Code. The information requested was:

1. The total number of police use of force incidents, broken down by type of force used, between 2013-2018 (seperated by year).
2. The total number of people that police used force against, between 2013-2018 (seperated by year).
3. A copy of all complaints reported by civilians against police between 2013-2018.
4. A copy of any documents indicating whether the civilian complaints identified in request #3 were sustained.
5. The policy manual of the police department. Clarified on August 8, 2019 to "all policies regarding use of force."
6. The current union contract between the city and any police unions or police associations.
7. All records regarding police shootings (including fatal police shootings, non-fatal police shootings and police shootings at the civilian that missed) between 2013-2018, including incident-level information specifying the date of each incident, race and gender of all subjets involved, what weapon is any they were armed with, any injuries or deaths resulting from the incident, the names of all officers involved, whether administrative investigations found the incidents to be justified under police department policy and any disciplinary actions taken against the officers as a result of the incident.
8. All records regarding civilian deaths or serious injuries resulting from police use of force between 2013-2018, including incident-level informaiton specifying the date of each incident, race and gender of all subjects involved, what weapon if any they were armed with, any injuries or deaths resulting from the incident and the names of all officers involved.

<sup>1</sup> The City does not believe that report numbers 2015-0529989, 2019-0519802, and 2016-0525789 contained on "Exhibit 7" are responsive to this request.

The responsive information enclosed herein may contain information that may be confidential. The City believes that the requested information is not public information and we ask for your guidance in this matter.

#### **CITY'S POSITION AND AUTHORITY**

The City of Amarillo believes the attached information may be confidential for the following reasons as stated in our September 24, 2019 letter:

1. The requested information is excepted from disclosure pursuant to § 552.108 of the Texas Government Code.

The responsive materials pertaining to report numbers 2018-0503636 and 2018-0521117 contained in Exhibit 7 are open investigations and prosecutions. Section 552.108(a)(1) of the Act provides an exception to disclosure if release of the requested information presumptively would interfere with the detection, investigation or prosecution of crime. *Gov't Code § 552.108(a)(1)*. It is the department's position that the submitted information relates to a pending investigation by the Amarillo Police Department and prosecution. Therefore, the submitted material is not public information at this time. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W. 2d 177, (Tex. Civ. App.-Houston [14<sup>th</sup> Dist.] 1975). Because this relates to a pending investigation and prosecution, the department believes that the release of the submitted materials would directly hinder prosecution, and should be withheld.

The City of Amarillo believes the requested information with respect to report numbers 2017-0515146, 2017-0521400, 2018-0509395, 2018-0517772, and 18-518178J contained in Exhibit 7 are not public information subject to disclosure pursuant to Texas Government Code, Section 552.108 (a)(2) which provides an exception to disclosure if the request pertains to information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Texas Government Code Section 552.108(b)(2) also provides that “[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: [...] the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.” The requested information relates to an inactive cases that did not result in convictions or deferred adjudications. Therefore, The City believes the submitted materials should be withheld.

With respect to report numbers 2013-0500930, 2013-0517934, 2013-0522311, 2013-0523137, 2014-0506514, 2014-0506520, 2015-0529412, 2015-0529989, 2016-0510371, 2016-0513803, 2016-0519802, and 2016-0525789 contained in Exhibit 7, the requestor is seeking indecent reports pertaining to police reports which include information that implicate the police department's policy regarding officer's weapons. Exhibit 1 contains internal memoranda prepared and used by the Amarillo Police Department to detect, investigate, and prosecute criminal acts. The requestor is seeing the police department policy regarding the use of force. With respect to Exhibit 2, the release of this information would allow private citizens to anticipate weaknesses in the law enforcement agency, jeopardize officer safety, and generally undermine law enforcement efforts. *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.); *see also* Open Records Decision No. 531 at 3-4 (1989). The departmental procedure that is being requested was prepared for internal use to instruct officers on tactical procedures for self defense and defense of others.

The release of the information contained in the notated reports contained in Exhibit 7, Exhibit 1, and Exhibit 2 have the potential of providing knowledge of specialized tactical procedures that could endanger the life or physical safety of the officer, or a citizen the officer is seeking to defend. Public knowledge of this information may encourage criminals to tailor their behavior in such a manner as to interfere with the objectives of the department in providing public safety. Furthermore, the release of this information has the potential of equipping criminals with knowledge of the type of weapons an officer keeps, the specialized training on when and how to use the weapon, and whether an officer has a back-up weapon and where it is carried. This knowledge has the potential of putting the officer or other citizens in harm's way. Therefore, the information marked on the enclosed document should be withheld as it may present a danger to the officers by potentially giving an advantage to a criminal over the officer.

2. The requested information is excepted from disclosure pursuant to § 552.130 of the Government Code.

The requested materials contain the driver's license numbers, motor vehicle registration information, license plate numbers, and vehicle identification numbers of an individual's other than the requestor. This information is excepted from disclosure pursuant to Government Code § 552.130(a)(1).

3. The requested information contains information protected by common-law privacy pursuant to section 552.101 of the Government Code

The requested materials contain the date of birth of an individual other than the requestor. Dates of birth of members of the public have been found to generally be protected under common-law privacy. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, (pet. denied) (mem. op.). *See also Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010).

4. The requested information contains Social Security Numbers

The requested materials contain the social security numbers of living persons. *See* Gov't Code §552.147.

5. The requested information contains information that is protected by §143.089(g) of the Local Government Code

The City of Amarillo is a civil service city under chapter 143 of the Texas Local Government Code. Section 143.089 contemplates two different types of personnel files for police officers in a civil service city: a civil service file and a departmental file. The chapter assigns various powers to civil service commissions, one of which is the custodian of personnel files. *See* Local Gov't Code § 143.089(a)-(f). The internal department file is not in the commission's custody, but is maintained by the police department pursuant to section 143.089(g) of the Local Government Code.

Pursuant to Texas Local Government Code Section 143.089(g), the information contained in police officers departmental files, which contain complaints that have not resulted in disciplinary action, may not be released "to any agency or person requesting information relating to a... police officer." Local Gov't Code § 143.098; *see* §§ 143.051-055. Only the **marked and highlighted** cases in the enclosed report marked as Exhibit 3 and the documents contained in Exhibit 4 resulted in discipline.

All other cases: the **ones not specifically marked** in Exhibit 3, The **ones marked** in Exhibit 1, the documents contained in Exhibit 5 (note that Exhibit 5 is a representative sample of these documents), and the documents contained in Exhibit 6 are subject to the confidential provisions of section 143.089(g). Thus, Exhibits 5, 6, the **unmarked** portions of Exhibit 4, and the **marked** portions of Exhibit 1 should be withheld.

Subsection (c) provides a right of access to the personnel file; however, there is no right of access provided in subsection (g). *See* Open Records Decision No. 650 at 3 (1996) (The Attorney General's office has held that subsection (g) confers no special right of access to the information contained in the department's file to a law enforcement agency or to any agency).

We are aware that it is an offense to either disclose that which is not public information or, to withhold that which is public information. The only safe harbor to avoid that conundrum is to request an opinion from your office.

**CONFIDENTIAL ENCLOSURE**

Enclosed with this letter, in a sealed envelope, is a copy of the request and copy of the information sought. This information is solely provided for *in camera* review by the Attorney General's office, as required by the Act, and further distribution is not authorized.

### NOTICE OF HOLIDAYS

The City of Amarillo offices are closed the following dates in 2019 in observance of the following holidays: January 1: New Years Day; January 21: Martin Luther King, Jr. Day; May 27: Memorial Day; July 4: Independence Day; September 2: Labor Day; November 11: Veterans Day; November 28 & 29: Thanksgiving; December 24 & 25: Christmas.

### NOTICE TO REQUESTOR:

Pursuant to Section 552.301(d) of the Texas Public Information Act, by copy of this letter, you are informed that we are withholding the information you requested and in accordance with State law, have asked for the Attorney General to determine whether you are able to acquire that information by this means at this time. There is no enclosure with your copy of this letter.

Cordially,



Mr. Thomas McMillian  
Assistant City Attorney  
Public Safety Legal Advisor  
City of Amarillo

Encl: Sealed envelope with documents

cc: Requestor

MuckRock News  
DEPT MR 77200  
411A Highland Ave.  
Somerville, MA 02144-2516